

Bankruptcy

Introduction:

Bankruptcy is a legal proceeding which helps some people who cannot pay their bills get a fresh financial start by temporarily or permanently, preventing creditors from collecting debts from you. Legal Assistance attorneys provide limited advice and assistance on bankruptcy. Generally, they may-explain bankruptcy, help you decide whether bankruptcy is right for you, and refer you to a bankruptcy attorney.

The Impact Bankruptcy Can Have on your Credit

Personal bankruptcy generally is considered the debt management tool of last resort because the results are long-lasting and far-reaching. A bankruptcy stays on your credit report for 10 years, making it difficult to acquire credit, buy a home, get life insurance, or sometimes get a job.

The consequences of bankruptcy are significant and require careful consideration.

The Benefits of Bankruptcy

However, it is a legal procedure that offers a fresh start for people who can't satisfy their debts. Individuals who follow the bankruptcy rules receive a discharge—a court order that says they do not have to repay certain debts.

Types of Bankruptcy

There are two primary types of personal bankruptcy: Chapter 13 and Chapter 7. Each must be filed in federal bankruptcy court. The current fees for seeking bankruptcy relief are about \$160: a filing fee of \$130 and an administrative fee of \$30. Attorney fees are additional and can vary widely.

Chapter 13 allows you, if you have a regular income and limited debt, to keep property, such as a mortgaged house or car that you otherwise might lose. In Chapter 13, the court approves a repayment plan that allows you to pay off a default during a period of three to five years, rather than surrender property.

Chapter 7, known as straight bankruptcy, involves liquidating all assets that are not exempt. Exempt property may include cars, work-related tools and basic household furnishings. Some property may be sold by a court-appointed official—a trustee—or turned over to creditors. You can receive a discharge of your debts under Chapter 7 only once every six years.

Both types of bankruptcy may get rid of unsecured debts and stop foreclosures, repossessions, garnishments, utility shut-offs, and debt collection activities. Both also provide exemptions that allow you to keep certain assets, although exemption amounts vary. Personal bankruptcy usually does not erase child support, alimony, fines, taxes, and some student loan obligations.

Frequently Asked Questions and Answers:

What Can Bankruptcy Do for Me?

Filing for bankruptcy may help you:

Eliminate the legal obligation to pay most or all of your debts.

Stop foreclosure on your house or mobile home and give you a chance to catch up on missed payments. (Bankruptcy does not, however, automatically eliminate mortgages and other liens on your property without payment.)

Prevent repossession of a car or other property or force the creditor to return property even after it has been repossessed.

Stop garnishment, debt collection letters, and other creditor actions to collect a debt.

Restore or prevent termination of utility service.

Limits To What Bankruptcy Can Do?

Bankruptcy cannot cure every financial problem. For example, it usually cannot --

Eliminate the rights of "secured" creditors, those creditors who have a mortgage or lien on your property as collateral for loans, such as car loans and home mortgages. You usually cannot keep property subject to a security interest, unless you continue to pay the debt; however, bankruptcy can require secured creditors to settle for installment payments and can also eliminate your obligation to make any additional payments, if your property is repossessed.

Generally, bankruptcy cannot discharge certain types of debts, including:

- some debts incurred within 180 days prior to filing bankruptcy;
 - child support;
 - alimony;
 - court fines and penalties;
 - some taxes, especially those accrued over the past three years;
 - debts not listed on your bankruptcy petition;
 - loans obtained through fraud; and
 - student loans owed to a school or government body, which became due less than 7 years before the bankruptcy was filed, unless payment would be an undue hardship.
- protect co-signers on your debts. When the primary debtor on a co-signed loan discharges the loan in bankruptcy, the co-signers may still have to repay all or part of the loan.
- discharge debts that arise after bankruptcy has been filed.

How Much Debt Should I Have Before Filing For Bankruptcy?

Some experts state that you shouldn't file for bankruptcy, unless you have at least \$15,000 to \$20,000 in debt. In theory, you can file with less debt, but the damage to your credit rating may outweigh the benefit of discharging a smaller debt load, and it also may be more difficult to persuade the court that a discharge is warranted.

What Property Is Exempt?

In a Chapter 7 bankruptcy you can keep all property which is exempt under bankruptcy law from the claims of creditors. In determining which property is exempt, you can use either state law or federal law. In many cases the federal exemptions are more generous. Federal exemptions include:

- \$16,500 in equity in your home;
- \$2,575 in equity in your car;
- \$425 per item in any household goods up to a total of \$8,625;
- \$1,625 in job-related tools, books, etc.;
- \$850 in any property, plus part of the unused exemption in your home, up to \$8,075.
- Your right to receive social security, unemployment, VA benefits, welfare, and pensions, regardless of the amount.

The exemption amounts above are doubled when a married couple files together.

Can I Own Anything After Bankruptcy?

Yes. You can keep all exempt property, which for most soldiers means everything in your home right now other than property subject to a security interest. You can almost always keep anything obtained after the bankruptcy is filed, too. The main exception is that if you receive an inheritance, property settlement, or life insurance payment within 180 days after filing for bankruptcy, that money or property might have to be turned over to your creditors, unless it qualifies for an exemption.

SCRA Protections

The Servicemembers' Civil Relief Act applies in bankruptcy cases. It provides protection to members of the military against the entry of default judgments and gives the court the ability to stay proceedings against military debtors. For more information visit:

<http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/scra.html>